

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

THOMAS M. BRADLEY, MICHELLE V.
ARENA, MARIA SLATER, GARY FOLINO,
ANTHONY FOLINO, FRANK FOLINO,
RICHARD H. MCCULLOUGH AND
HOLLY A. MCCULLOUGH, JOHN KEEFE,
KILEY KEEFE, NANCI KEEFE, ROCK
MANAGEMENT SERVICES, WILLIAM
KEEFE AND MARTHA KEEFE, DANIEL
MURRY, MASSARO CORPORATION,
JOSEPH MASSARO II AND CAROLYN
MASSARO, STEVEN MASSARO, AND
JOSEPH A. MASSARO III,

Plaintiffs,

v.

ADVEST, INC., MERRILL LYNCH, PIERCE
FENNER & SMITH INCORPORATED,
BANK OF AMERICA, N.A. (as successor in
interest to Merrill Lynch Pierce, Fenner &
Smith Incorporated and Advest Incorporated),
ROBERT FELDMAN,

Defendants.

ELECTRONICALLY FILED

Civil Action No.

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1331, 1367, 1441, and 1446, with the consent of all Defendants, Advest, Inc. (“Advest”), Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Merrill Lynch”), Bank of America, N.A. (“BANA”), and Robert Feldman (“Feldman”) (collectively “Defendants”), by and through counsel, remove this action from the Court of Common Pleas of Allegheny County, Pennsylvania to the United States District Court for the Western District of Pennsylvania, Pittsburgh Division.

Removal is based on federal question jurisdiction because a federal question appears on the face of the Complaint filed by Richard H. McCullough and Holly A. McCullough

(“Plaintiffs”).¹ In support of its Notice, Defendants state as follows:

I. Background

1. On February 27, 2017, Plaintiffs filed the Complaint in in the Court of Common Pleas of Allegheny County, Pennsylvania. In accordance with 28 U.S.C. § 1446(a), a copy of all process, pleadings, and orders received by Defendants is attached as Exhibit A.

2. In the Complaint, Plaintiffs allege that, from 2002 to 2010, Defendant Feldman, while employed by the corporate Defendants, used false representations and non-disclosures to induce Plaintiffs to purchase shares of two penny stocks, from which they suffered losses. (Compl. ¶¶ 6-13, 18, 28, 37, 38, 47). Plaintiffs further allege that Defendant Feldman stood to benefit from those purchases through increases in his book of business and commission compensation. (Compl. ¶¶ 14, 16, 17, 22, 26, 33, 43).

3. On these allegations, Plaintiffs claim, among other things, that Defendants failed to comply with the U.S. Securities and Exchange Act of 1934 (15 U.S.C. § 78j) and SEC regulations (17 C.F.R. §§ 240.10b, *et seq.*). (Compl. ¶¶ 23-28).

II. This Notice of Removal is Timely Filed

4. This lawsuit is a civil action within the meaning of the Acts of Congress relating to removal of causes.

5. Defendants received a copy of the pleading “Complaint in Civil Action” by mail on March 2, 2017.

6. The removal of this action to this Court is timely under 28. U.S.C. § 1446(b) because it is filed within thirty days after March 2, 2017, which is the date Defendants first received the Complaint in this action.

¹ The named plaintiffs commenced this action by writ of summons in 2011. However, the February 2017 complaint was filed only by Richard H. McCullough and Holly A. McCullough.

7. The United States District Court for the Western District of Pennsylvania is the proper place to file this Notice of Removal under U.S.C. § 1441(a) because it is the federal district court that embraces the place where the original action was filed and is pending.

III. This Court Has Federal Question Jurisdiction

8. Plaintiffs allege claims under the U.S. Securities and Exchange Act of 1934. (Compl. ¶¶ 23-38). Therefore, under 28 U.S.C. § 1331, federal question jurisdiction exists over Plaintiffs' claims because the resolution of Plaintiffs' claims will require adjudication of disputed questions of federal law.

9. Pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction over the nonfederal claims because they arise out of the same operative facts as Plaintiffs' claims under the U.S. Securities and Exchange Act of 1934 and "form part of the same case or controversy under Article III of the United States Constitution."

10. Because Plaintiffs' U.S. Securities and Exchange Act claim arises under the law of the United States, removal of this entire cause of action is therefore appropriate under 28 U.S.C. § 1441(a)-(c).

IV. Notice of Removal to the Court of Common Pleas of Allegheny County, Pennsylvania

11. Defendants concurrently are filing a copy of the Notice of Removal with the Court of Common Pleas of Allegheny County, Pennsylvania. A copy of the written notice of the Notice of Removal to Federal Court is attached hereto as Exhibit B. In accordance with 28 U.S.C. § 1446(d), Defendants will give written notice to Plaintiffs by contemporaneously serving this Notice of Removal on Plaintiffs.

V. Conclusion

For the foregoing reasons, Defendants request that this civil action be, and is hereby, removed to the United States District Court for the Western District of Pennsylvania, Pittsburgh

Division, that this Court assume jurisdiction of this civil action, and that this Court enter such other and further orders as may be necessary to accomplish the requested removal and promote the ends of justice.

Dated: April 3, 2017

MORGAN, LEWIS & BOCKIUS LLP

By: *s/John K. Gisleson*

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*Attorneys for Defendants
Advest, Inc., Merrill Lynch, Pierce, Fenner &
Smith Incorporated, Bank of America, N.A.,
and Robert Feldman*

CERTIFICATE OF SERVICE

I hereby certify that on April 3, 2017, a true and correct copy of the foregoing **NOTICE OF REMOVAL** was filed with the Clerk of the Court using the CM/ECF system and served via United States certified mail, return receipt requested, upon the following:

Rolf Louis Patberg, Esquire
Patberg, Carmody & Ging
Deushtown Center
801 Vinial Street – Third Floor
Pittsburgh, PA 15212

Attorney for Plaintiffs

s/John K. Gisleson
John K. Gisleson